PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

Site No.3, Block B, Madhya Marg, Sector 18-A, CHANDIGARH

Petition No. 32 of 2019
Date of Order:07.09.2020

Petition for True up of Tariff for FY 2016-17 under Sections 62 and 86 of the Electricity Act, 2003 read with (a) Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005; (b) the Central Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014; and (c) Amended and Restated Power Purchase Agreement dated 26.05.2009 executed between Petitioner (GVK) Limited and Punjab State Power Corporation Limited (formerly known as Punjab State Electricity Board)

AND

In the matter of: GVK Power (Goindwal Sahib) Limited, Paigah House,156-159, Sardar Patel Road,Secundrabad-540003.

....Petitioner

Versus

Punjab State Power Corporation Limited, The Mall Patiala

.....Respondent

Present: Ms. Kusumjit Sidhu, Chairperson
Shri S.S.Sarna, Member
Ms. Anjuli Chandra, Member

ORDER

1.1 GVK Power (Goindwal Sahib) Limited (GVK) has filed the present petition for True Up of Tariff for FY 2016-17 for its 540

MW Coal Based Thermal Power Station located at Goindwal Sahib in the State of Punjab. GVK had submitted estimated and actual Annual Revenue Requirement of Rs. 2192.63 Crore and Rs. 1056.81 Crore respectively under different heads considering a capital cost of Rs 4267.30 Crore. GVK has prayed to:

a) Admit the present petition seeking approval of True up for FY 2016-17.

b) Approve the True-up petition for 2016-17.

c) To pass such order(s) as the Commission may deem fit in the circumstances and facts of the present petition.

1.2 The deficiencies observed by the Commission were conveyed to GVK vide letter no. PSERC/Reg/2618-2619 dated 21.01.2020, directing GVK to file its reply to the deficiencies before 29.01.2020. Notice was also issued to PSPCL. The petition was taken up for hearing on admission on 06.02.2020. Some more deficiencies were observed in the petition and the same were conveyed to GVK alongwith the Order dated 07.02.2020.

1.3 GVK replied to the deficiencies vide affidavit dated 11.03.2020. The petition was admitted vide order dated 13.03.2020 further directing PSPCL to file its reply to the petition by 26.03.2020 and rejoinder, if any, by GVK by 03.04.2020.

1.4 PSPCL filed its reply to the petition vide memo No. 5415 dated 27.05.2020. The Commission vide order dated 16.06.2020 directed GVK to issue a public notice inviting objections/suggestions from the general public/stakeholders within 10 days of the publication of the notice. PSPCL filed its reply vide memo No. 5516 dated 23.06.2020. The Commission vide order dated 26.06.2020 allowed GVK to file the revised figures according to the Order of the Commission in petition No. 54 of 2017. PSPCL was allowed to submit its sur-rejoinder, if any, to the rejoinder filed by GVK. The Commission directed GVK to submit the draft public notice by 03.07.2020 failing which GVK will be liable to action under Section 142 of the Electricity Act, 2003 and the petition was fixed for hearing on 29.07.2020.

1.5 The public notice was published in Times of India (English), Daily Ajit (Punjabi) and Ajit Samachar (Hindi) on 10.07.2020. GVK, in pursuance to the Order dated 26.06.2020, submitted the revised figures vide affidavit dated 16.07.2020 alongwith the reply to deficiencies raised by the Commission in its notice dated 21.01.2020. PSPCL vide memo no. 5466 dated 28.07.2020 filed its amended reply to the revised true-up proposal submitted by GVK. The petition was taken up for hearing as well as public hearing on 29.07.2020, however, nobody appeared from the public in public hearing. After hearing the parties, the Order was reserved vide Order dated 30.07.2020 while allowing the parties to file their written submissions as per their request.

1.6 GVK Power (Goindwal Sahib) Limited (GVK), the Petitioner, filed the instant Petition for True-up of FY 2016-17 of its 2 x 270 MW Coal Based Thermal Power Project under Section 63 of the Electricity Act, 2003 read with Regulation 62 of Punjab State Electricity Regulatory Commission (Terms and conditions for determination of Generation, Transmission, wheeling and retail supply Tariff) Regulations, 2014.

1.7 The commercial operation of this project was declared on 16.04.2016. The Commission vide its order dated 17.01.2020 in Petition No.54 of 2017, approved the capital cost of the project as Rs 3058.37 Crore and determined the provisional Annual Fixed Cost of Rs 545.42 Crore for FY 2016-17. GVK in its original petition has claimed Annual Revenue Requirement of Rs. 1056.81 Crore which was further revised on 21.07.2020 and 21.08.2020 to Rs. 649.44 Crore as given below:

Table No.1: Annual Revenue Requirement submitted by GVK for FY 2016-17

(Rs. Crores)

Sr. No.	Particulars	Estimated	Approved by the Commission	Actual
1	Fuel Cost			
a)	Primary Fuel Cost	1180.95	52.07	65.34
b)	Secondary Fuel Cost	5.00		1.12
2	SLDC Fees & Charges			
3	O&M expenses	139.81	30.41	30.78
	a) R&M Expenses			
	b) Employee Expenses			
	c) A&G Expenses			
4	Depreciation	202.59	141.27	139.41
5	Interest on Loans	404.72	225.51	261.81
6	Interest on Working Capital	73.62	12.25	15.50
7	Prior Period Expense			
8	Extraordinary Items			
9	Other Debts and Write-offs			
10	Income Tax	0.00		0.00
11	Less: Expenses capitalised			
	a) Interest Charges Capitalized			
	b) R&M Expenses Capitalized			
	c) A&G Expense Capitalized			
	d) Employee Expenses Capitalized			

Sr. No.	Particulars	Estimated	Approved by the Commission	Actual
	Subtotal (a+b+c+d)	0.00		0.00
	Subtotal Expenditure (1+2+3+4+5+6+7+8+9+10-11)	**2006.69**	**461.51**	**513.96**
C	Return on Equity	185.94	135.98	135.98
D	Non Tariff and other Income	0.00	0.00	0.50
E	**Annual Revenue Requirement (B+C-D)**	**2192.63**	**597.49**	**649.44**

Notes:

1. Depreciation, Interest on Loan, Interest on working Capital and Return on Equity have been claimed in accordance with PSERC Tariff Regulations 2005.
2. O&M Expenses have been claimed as actual O&M expenses as per books of accounts

2.0 Capital Cost for FY 2016-17

GVK's submission:

2.1 GVK in the petition has claimed capital expenditure of Rs. 4383.46 Crore as on the Commercial Operation Date i.e. 16.04.2016 (including un-discharged liabilities of Rs. 116.16 Crore). The Un-discharged liabilities of the project, as submitted by GVK are as follows:

(a) Retention money payable to BHEL of Rs. 111.11 Crore.

(b) Bills outstanding against BTG Contracts of Rs. 3.54 Crore.

(c) Amount outstanding against spares of Rs. 1.51 Crore.

The capital expenditure (excluding un-discharged liabilities) is Rs. 4267.30 Crore. Further, GVK has not claimed any additional capital cost during the period from COD to 31.03.2017.

2.2 Further, GVK in its revised submission received on 21.07.2020 submitted that Capital Cost incurred till COD of the Project i.e. 16.04.2016 is Rs. 4376.41 Crore. The financial closure of the Project was achieved in 2010 considering a capital cost of Rs. 3200 Crores and a debt equity ratio of 75:25. However, due to events of Force Majeure and Change in Law, i.e. cancellation of the Captive Coal Blocks, actual COD took place on 16.04.2016, resulting in time overrun of approximately 39 months from SCOD as per financial closure and cost overrun of Rs. 1176.41 Crore. The overall debt to equity ratio at the stage of project completion stood at 73:27. However, the Commission vide order dated 17.01.2020 in Petition no. 54 of 2017 approved a capital cost of Rs.3058.37 Crore.

PSPCL's submission:

2.3 PSPCL vide its submissions dated 27.05.2020 stated that the Commission vide its Order dated 17.01.2020 passed in the petition no. 54 of 2017 has determined the capital cost of the GVK's project as Rs. 3058.37 Crore as on the date of commissioning of the project.

Commission's Analysis

2.4 The Commission vide its Order dated 17.01.2020 in petition no. 54 of 2017 has determined the capital cost of the project after prudence check at Rs. 3058.37 Crore as on the date of commissioning of the GVK Power Plant i.e. 16.04.2016.

As, GVK has not claimed any additional capital expenditure from 17.04.2016 to 31.03.2017 in the true-up petition for FY 2016-17, thus, the Commission approves capital cost of Rs. 3058.37 Crore for the FY 2016-17 as on 31.03.2017.

3.0 Operation and Maintenance Expenses

GVK's Submission

3.1 GVK submitted that the Project being a coal-based power plant is governed by Regulation 29 of the CERC Tariff Regulations.

The CERC Tariff Regulations prescribes Operation and Maintenance expenses for 200/210/250 MW sets for FY 2016-2017 at the rate of Rs. 27.00 Lakhs per MW. The O&M expenses has been considered at Rs. 139.81 Crores on normative basis.

3.2 GVK in its revised submission received on 21.07.2020 and 21.08.2020, submitted that in terms of Regulation 28(2) of the PSERC Tariff Regulation 2005, O&M Expenses allowable to GVK is to be computed as under:

"28. 2 [OPERATION AND MAINTENANCE EXPENSES

(1) 'Operation & Maintenance expenses' or 'O&M expenses' shall mean repair and maintenance (R&M) expenses, employee expenses and administrative & general expenses (A&G) including insurance.

(2) O&M expenses for distribution licensee (s) shall be determined by the Commission as follows :

(a) O&M expenses as approved by the Commission for the year 2011-12 (true up) shall be considered as base O&M expenses for determination of O&M expenses for subsequent years.

(b) Base O&M expenses (except employee cost) as above shall be adjusted according to variation in the average rate (on monthly basis) of Wholesale Price Index (all commodities) over the year to determine the O&M expenses for subsequent years.

(c) In case of a new distribution licensee (s), the Commission shall make suitable assessment of base O&M expenses of the new licensee (s) and allow O&M expenses for subsequent years for the new licensee (s) on the basis of such estimation and principle as given in clause (b) above. However, for employee cost the principle specified in clause (3) below will be followed.

(3) The employee cost for a distribution licensee (s) shall be determined as follows:

(a) The employee cost as claimed by the distribution licensee (s) shall be considered in two parts:

(i) Terminal benefits such as Death-cum-Retirement Gratuity, Pension, Commuted Pension, Leave Encashment, LTC, Medical reimbursement including fixed medical allowance in respect of pensioners and share of BBMB employee expenses and

(ii) all other expenses accounted for under different sub-heads of employee cost taken together.

The cost component of terminal benefits and BBMB expenses shall be allowed on actual basis and increase in all other expenses under different sub-heads shall be limited to the increase in Wholesale Price Index (all commodities) as per clause (2) (b) above.

(b) Exceptional increase in employee cost on account of pay revision etc. shall be considered separately by the Commission.

(c) The additional employee cost in case of New installations/Network for the year of installation shall be considered separately by the Commission on case to case basis keeping in view the principles and methodologies enunciated in these regulations.

….

(5)(a) For the determination of O&M expenses (except employee cost) for generating company, the Commission shall allow O & M expenses (except employee cost) in accordance with Clause (2). The employee cost will, however, be determined keeping in view the provisions contained in Clause (3).

(b) In case of a new generating company (s), the Commission shall make suitable assessment of base O&M expenses of the new licensee (s) and allow O&M expenses for subsequent years for the

new licensee (s) on the basis of such estimation and principle as given in Clause (2)(b) above. However, for employee cost the principle specified in Clause (3) above will be followed.”

3.3 The actual O&M Expenditure incurred by GVK in FY 2016-17 is as under:

Table No. 2: O& M Expenses claimed by GVK for FY 2016-17

(Rs. Crore)

Sr. No	Particulars	Estimated	Approved by the Commission	Actuals
1	Plant Capacity	540MW	540 MW	540 MW
2	O&M Expenses	145.80	31.80	32.08
3	Pro rata O&M Expenses for FY 2016-17	139.41	30.41	30.78

3.4 In reply to the deficiencies raised by the Commission, GVK submitted proof of payment of employee contributions alongwith the requisite details of employees for FY 2016-17.

PSPCL’s Submission

3.5 PSPCL vide Memo No. 5516 TR-5/952 dated 23.06.2020 submitted that the O&M expenses are required to be recomputed by the Petitioner strictly in accordance with the methodology prescribed under Regulations 28 of the PSERC Tariff Regulations 2014.

3.6 PSPCL vide its submission dated 28.07.2020 and 10.08.2020 stated that this Commissions in its Order dated 17.01.2020 while approving O&M expenses for the Petitioner at Rs.30.41. Crores has held as under:

“26.1.1

…

As per the above sub regulation(5)(b), the Commission has to make suitable assessment of base O&M expenses in case of new generating company. This exercise will be taken up during true-up of FY 2016-17.

…… An expenditure Rs. 0.28 Crore depicted in ‘other operating expenses” in Annual Audited Accounts relates to provision for diminution in value of investment and the same is not allowable as O&M expenses. Thus, O&M expenses are allowed at Rs.31.80 (32.08-0.28) Crore for FY 2016-17."

Thus, while agreeing to take up the true up exercise for O&M expenses at the appropriate stage, this Commission had declined to allow Rs. 0.28 Crore shown as other operating expenses" by GVK in its accounts, GVK is now seeking the said amount in the present true-up Petition. However, yet again no details of the same have been furnished by GVK. As such the same is liable to strict scrutiny and prudence check by the Commission.

Commission’s Analysis

3.7 The Commission had provisionally approved O& M expenses of Rs. 30.41 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020 in Petition no 54 of 2017.

3.8 The O&M expenses are to be determined as per provisions of Regulation 28 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 as mentioned in para 3.2 above.

3.9 As per the above sub regulation(5)(b), the Commission has to make a reasonable assessment of the base O&M expenses in case of a new generating company. The Annual Audited Accounts of GVK for FY 2016-17 reveals Employee benefit expenses of Rs 8.66 Crores which includes Terminal Benefits of Rs 0.65 Crore. The Commission allows the terminal benefits for FY 2016-17 as claimed by GVK in the petition. The Commission allows the claim of the Employee cost as under:

Table No.3: Employee cost allowed by the Commission for the period 17.04.2016 to 31.03.2017.

(Rs. Crore)

Sr.no	Particulars	Amount
1	Terminal benefits	0.65
2	Other Employee cost	8.01
3	Total Employee Cost for FY 2016-17	8.66
4	**Total Employee Cost (8.66*349/365)**	**8.28**

3.10 The other operating expenses (A&G and R&M expenses) are Rs.23.42 (10.48+12.94) Crore as per the Annual Audited Accounts of GVK for FY 2016-17. An expenditure of Rs.0.28 Crore depicted as “other operating expenses‟ in the Annual Audited Accounts relates to provision for diminution in value of investment and the same is not allowable as O&M expenses. Thus, the Commission approves R&M and A&G expenses as per under:

Table No.4: R&M and A&G expenses approves by the Commission for the period 17.04.2016 to 31.03.2017.

(Rs. Crore)

Sr. No.	Particulars	Amount
1.	R & M expenses	12.94
2.	A & G expenses	10.48
3.	**R&M and A&G expenses**	**23.42**
4.	Less Diminution in value of investment	0.28
5.	R & M and A & G expenses for FY 2016-17	23.14
6.	**R&M and A&G expenses (23.14*349/365)**	**22.13**

3.11 Accordingly, the Commission approves O&M expenses for the period 17.04.2016 to 31.03.2017 as under:

Table No. 5: O&M expenses approved by the Commission for the period17.04.2016 to 31.03.2017.

(Rs. Crore)

Sr. No	Particulars	FY 2016-17	17.04.2016 to 31.03.2017
1.	Employee Cost	8.66	8.28
2.	R&M expenses	23.14	22.13
3.	**O & M expenses**	**31.80**	**30.41**

4.0 Depreciation

GVK's Submission:

4.1 GVK submitted that depreciation has been computed for FY 2016-17 in accordance with Regulation 27 of the CERC Tariff Regulations.

"***27. Depreciation:***

(1) Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof or a transmission system including communication system or element thereof. In case of the tariff of all the units of a generating station or all elements of a transmission system including communication system for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station or the transmission system taking into consideration the depreciation of individual units or elements thereof.

Provided that effective date of commercial operation shall be worked out by considering the actual date of commercial operation and installed capacity of all the units of the generating station or capital cost of all elements of the transmission system, for which single tariff needs to be determined.

(2) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station or multiple elements of transmission system, weighted average life for the generating station of the transmission system shall be applied. Depreciation shall be chargeable from the first year of commercial operation. In case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

(3) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:

Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement signed by the developers with the State Government for development of the Plant:

Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:

Provided also that any depreciation disallowed on account of lower availability of the generating station or generating unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life and the extended life.

(4) Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.

(5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-II to these regulations for the assets of the generating station and transmission system:

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets."

4.2 GVK in its petition has submitted that the weighted average rate of depreciation of 4.80% based on the actual capital cost as on Station COD and the applicable depreciation rates for the different categories of assets as per Appendix-II (Depreciation Schedule) of the CERC Tariff Regulations. Further, GVK has worked out depreciation of Rs. 196.24 Crore at the weighted average rate of depreciation of 4.80% based on the Capital cost of Rs 4267.30 Crore.

4.3 GVK in its revised submission received on 21.07.2020 and 21.08.2020 has submitted that in terms of Regulation 27(1) (d) of the PSERC Tariff Regulations 2005 depreciation up to 90% of capital cost of the power plant using the straight line method is allowed over the useful life of the Project at the rate of depreciation specified by the Central Electricity Regulatory Commission.

4.4 GVK submitted that the gross fixed asset of the Project for the purpose of depreciation is Rs. 3058.37 Crore in its revised submission dated 21.07.2020. The category-wise gross fixed asset value and the corresponding depreciation rates as submitted by GVK in accordance to the Appendix-II (Depreciation schedule) of the CERC Tariff Regulations, 2014 is as under:

Table No. 6: Rates of Depreciation submitted by GVK for FY 2016-17.

Sr. No	Particulars	Asset value as on Station COD	Rate of depreciation (as per CERC 2014-19 Tariff Regulations)
1.	Land and land rights	96.75	0.00%
2.	Buildings	486.29	3.34%
3.	Plant and machinery	2447.66	5.28%
4.	Vehicles	0.63	9.50%
5.	Furniture and fixtures	1.23	6.33%
6.	Office equipment	1.12	6.33%
7.	Computers	0.63	15.00%
8.	Computer software	0.12	15.00%
9.	Right to Use Railway Line	23.94	0.00%
10.	**Total**	**3058.37**	**Weighted avg. rate of depreciation: 4.77%**

4.5 GVK has further submitted that the depreciation for the year has been computed based on the Capital cost approved by the

Commission in Order dated 17.01.2020 in Petition no 54 of 2017 and the rate of depreciation derived in the above table. Depreciation thus derived has been pro-rated based on Project COD i.e. 16.04.2016 as shown under:

Table No. 7: Depreciation expenses submitted by GVK

(Rs. Crore)

Particulars		Estimated	Approved by the Commission	Truing Up
Opening Capital Cost as on Station COD	A		3058.37	3058.37
Less: Undischarged liabilities included in above	B			
Opening Capital Cost excluding undischarged liabilities	c = a – b		3058.37	3058.37
Additional capitalization during the year	D			-
Less: Undischarged liabilities included in additional capitalization	E			-
Add: Liabilities discharged during the year	F			-
Closing Capital Cost	g = d - e + f		3058.37	3058.37
Average Capital Cost	h = (c + g)/2		3058.37	3058.37
Freehold land	I		96.75	96.75
Weighted Average Rate of depreciation	J		4.77%	4.77%
Remaining depreciable value	k = 90% x (h - i)			2665.46
Depreciation (annualised)	l = Min (j x h, k)	**202.59**	141.27	145.80
Depreciation (for the period)	**m = l x (349/365)**	**202.59**	**141.27**	**139.41**
Cumulative depreciation at the beginning of the period	N			-
Cumulative depreciation at the end of the period	o = m + n	**202.59**	141.27	139.41

4.6 In reply to the deficiencies raised by the Commission, GVK submitted the fixed asset register prepared for the assets created on 16.04.2016 and as on 31.03.2017 for which depreciation has been claimed during FY 2016-17. GVK further submitted that that the fixed asset register has been prepared as per the actual cost incurred by GVK for each asset.

PSPCL's Submission

4.7 PSPCL vide Memo No. 5516 dated 23.06.2020 submitted that since the base figures for calculation of depreciation based on the capital cost of the project, the same has been considered as the amounts claimed by GVK and not the amounts approved by the Commission in its Final Tariff Order, the same are inadmissible.

4.8 PSPCL vide its submission dated 28.07.2020 and 10.8.2020 submitted that the Commission in its Order dated 17.01.2020 had considered a weighted average rate of 4.77% based upon the depreciation of Rs. 201.37 Crore for FY 2016-17 depicted by GVK in its annual audited accounts and had determined sum of Rs.141.27 Crore as permissible depreciation for GVK's project. However, GVK in the present Petition has submitted a sum of Rs.139.41 Crore as depreciation of its gross fixed assets, excluding freehold land as described under Format 12 annexed to the present petition. Since, the determined deprecation amount of the gross fixed assets forms the basis of calculation of interest on loan capital which is also the provision under Regulation 26(5) of the PSERC Tariff Regulations, 2005, the Commission may subject the same to strict scrutiny and prudence check before allowing true-up of the same.

4.9 PSPCL further submitted that it has observed certain abnormal expenditures while checking the said fixed asset register furnished by GVK and requested the Commission for prudence check of the same.

Commission's Analysis

4.10 The Commission has in Petition no.54 of 2017 already carried out a detailed prudence check of the Capital Cost of the project. Depreciation is allowable on the approved Capital cost.

4.11 The Commission had provisionally approved Depreciation of Rs. 141.27 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.

4.12 Depreciation is to be determined as per provisions of Regulations 27 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 which is as under:

27. DEPRECIATION

(1) For the purpose of tariff, depreciation shall be computed in the following manner:

(a) The value base for the purpose of depreciation shall be the capital cost of the assets admitted by the Commission: Provided that land is not a depreciable asset and its cost shall be excluded from the capital cost while computing depreciation: Provided further that depreciation has been calculated after deduction of consumer contributions, capital subsidies/Government grants.

(b) The historical cost of the asset shall include additional capitalisation.

(c) The historical cost shall include foreign currency funding converted to equivalent rupees at the exchange rate prevalent on the date when foreign currency was actually availed but not later than the date of commercial operation.

(d) Depreciation for generation and transmission assets shall be calculated annually as per straight-line method over the useful life of the asset at the rate of depreciation specified by the Central Electricity Regulatory Commission from time to time. Provided that the total

depreciation during the life of the asset shall not exceed 90% of the original cost.

(e) Depreciation for distribution assets and other assets not specified by CERC shall be at the rates notified by the Commission. Provided that the total depreciation during the life of the asset shall not exceed 90% of the original cost.

(2) The generating company and the licensees shall make all efforts for aligning the tenure of long term debt with permissible rate of depreciation to reduce front loading of tariffs. In case of inadequacy of cash for repayment of debt, only in extreme cases, the Commission may allow Advance Against Depreciation (AAD) in addition to the allowable Depreciation in the following manner:

AAD = Loan repayment amount as per the schedule of repayment subject to a ceiling of 1/10th of loan amount as per Regulation 24 minus depreciation as per schedule Provided that Advance Against Depreciation shall be permitted only if the cumulative repayment up to a particular year exceeds the cumulative depreciation up to that year, Provided further that Advance Against Depreciation in a year shall be restricted to the extent of difference between cumulative repayment and cumulative depreciation up to that year.

(3) On repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.

(4) Depreciation shall be chargeable from the first year of operation. In case of operation of the asset for part of the year, depreciation shall be charged on pro-rata basis.

4.13 As per the Annual Audited Accounts of GVK for FY 2016-17, depreciation of Rs. 201.37 Crore has been shown on Gross Fixed Asset of Rs. 4224.02 Crore (excluding land value). There has been no addition of assets from 17.04.2016 to 31.03.2017. As per table no 6 GVK has claimed weighted average rate of depreciation as 4.77% which is considered by the Commission for computing the depreciation for the period from 17.04.2016 to 31.03.2017.

4.14 The Commission has determined Gross Fixed Assets (GFA) of Rs. 3058.37 Crore vide its Order dated 17.01.2020. The Commission allows the depreciation for the period from 17.04.2016 to 31.03.2017 as under:

Table No.8: Depreciation allowed by the Commission for the period 17.04.2016 to 31.03.2017.

(Rs. Crore)

Sr. No.	Particulars	Amount
1.	Opening value of GFA as on 17.04.2016	3058.37
2.	Value of Land	96.75
3.	Opening value of GFA (net of Land)	2961.62
4.	Addition /disposal during the year	0.00
5.	Closing value of GFA	2961.62
6.	Average value of GFA	2961.62
7.	Weighted Average Rate of Depreciation	4.77%
8.	Depreciation for FY 2016-17 (6 x 7)	141.27
9.	**Depreciation (141.27 x 349/365)**	**135.08**

Accordingly, the Commission allows the depreciation of Rs. 135.08 Crore for the period 17.04.2016 to 31.03.2017.

5.0 **Return on equity**

GVK's Submission

5.1 GVK had originally computed the Return on Equity for 2016-17 as Rs.171.25 Crore in accordance with Regulation 24 of the CERC Tariff Regulations, 2014, as under:

"***24. Return on Equity:***

(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 19.

(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating stations, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations

including pumped storage hydro generating stations and run of river generating station with pondage…"

5.2 GVK has submitted that for computation of the base equity, the opening debt-equity ratio as on Station COD has been considered at 73:27 as stated earlier in this petition, and the opening capital cost as on Station COD has been considered net of undischarged liabilities. ROE thus derived has been pro-rated based on Station COD.

5.3 GVK in its revised submission on 21.08.2020 has submitted that it has funded the claimed capital cost of Rs 4267.38 Crore in the ratio of 73.8 :26.2 and in terms of Regulation 24 of PSERC Tariff Regulations 2005,the total hard cost of the project ought to be considered as per actual debt equity ratio. However, in Order dated 17.01.2020,this Commission subtracted the entire equity infused by GVK from the hard cost(~50%) and considered the balance amount as outstanding loan amounts of GVK.

5.4 GVK in its revised submission (received on 21.07.2020) has calculated Return on Equity @ 15.50% as per Regulation 25 of PSERC Tariff Regulations, 2005 on the paid up equity capital determined in terms of Order dated 17.01.2020. GVK has submitted that for the computation of the base equity, the opening debt-equity ratio as on Station COD has been considered at 70:30 as stated earlier in this petition, and the opening capital cost as on Station COD has been considered. Return on Equity thus derived has been pro-rated based on Station COD. Computation of ROE is shown in the following table:

Table No. 9: Return on Equity submitted by GVK for FY 2016-17

(Rs. Crore)

Particulars		Estimated	Approved by the Commission	Truing Up
Opening Capital Cost as on Station COD	(a)		3058.37	3058.37
Equity percentage as on COD	(b)		30%	30%
Normative Opening Equity considered for ROE computation (= a x b)	(c)		917.51	917.51
Equity addition due to additional capitalization during the year	(d)			
Normative Closing Equity (= c + d)	(e)		917.51	917.51
Average Equity (Average of 'c' and 'e')	(f)		917.51	917.51
Normative Rate of ROE as per PSERC Tariff Regulations 2005	(g)		15.50%	15.50%
Return on Equity - Annualized (= f x g)	(h)		142.21	142.21
Return on Equity - Pro-rata (= h x 349 / 365))(w.e.f 16.04.2016)	**(i)**	**185.94**	**135.98**	**135.98**

PSPCL's Submission

5.5 PSPCL vide Memo No. 5516 dated 23.06.2020 submitted that since the base figures for calculation of Return on Equity, being the capital cost of the project, the equity infused by GVK has been considered as the amounts claimed by GVK and not the amounts approved by this the Commission in its Final Tariff Order, the same are inadmissible.

5.6 PSPCL vide its submission dated 28.07.2020 and 10.08.2020 submitted that based on Regulation 24 of the PSERC Tariff Regulation, 2005, GVK has submitted that since the actual equity invested by it is in excess of 30% of the capital cost, the equity component for the purpose of tariff is considered as 30% of the approved capital cost of Rs. 3058.57 Crore. As per Regulation 24, in case equity invested by a generating station is in excess of 30% of the completed capital cost, the said equity in excess of 30% is to be considered as normative loan. In its

Order dated 17.01.2020, the Commission has observed that since the actual equity infused by GVK in the project was Rs.1118.06 Crore and 30% of the completed capital cost of Rs. 3058.37 Crore comes to Rs. 917.51 Crore, the remaining Rs. 200.55 Crore may be deemed as normative loan. As such, the total loan component for GVK's project as approved by the Commission is Rs.1940.31 Crore (Rs. 3058.37 Crore - Rs. 1118.06 Crore) and in addition thereto Rs. 200.55 Crore has been approved as normative loan. The debt-equity ratio for GVK's project for FY 2016-17 is liable to be viewed accordingly by the Commission.

5.7 PSPCL further submitted that as per the submissions of GVK, there is no element of any true-up under the present head. As such, no response to the same is required from the PSPCL.

Commission's Analysis

5.8 The Commission had provisionally approved Return on equity of Rs.135.98 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.

5.9 As per Regulation 24 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 which is as under:

24. DEBT-EQUITY RATIO

(1) For the purpose of determination of tariff, debt-equity ratio in case of a new project commencing after the date of notification of these Regulations shall be 70:30. Where equity employed is more than 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. Where actual equity employed is less than 30%, the actual debt and equity shall be considered for determination of tariff.

Provided that the Commission may, in appropriate cases, consider equity higher than 30% for the purpose of *determination of tariff, where the generating company or the licensee is able to establish to the satisfaction of the Commission that deployment of equity more than 30% is in the interest of the general public;*

(2) In case of existing and ongoing projects, the actual debt-equity ratio shall be considered for determination of tariff. However, any expansion shall be governed as per clause (1) above.

(3) The debt and equity amounts arrived at in accordance with clause (1) and (2) shall be used for all purposes including for determining interest on loan, return on equity, Advance against Depreciation and Foreign Exchange Rate Variation.

5.10 The Regulations state that Debt-equity ratio in case of new projects shall be 70:30 for the purpose of determination of tariff. Where equity employed is more than 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. The Commission has considered the equity of Rs. 1118.06 Crore in the capital cost of Rs. 3058.37 Crore which is more than the 30% of the approved capital cost. Accordingly, equity works out to be Rs. 917.51 (30% of 3058.37) Crore and the balance of Rs. 200.55 (1118.06-917.51) Crore is considered as normative loan as per the above referred Regulation.

5.11 Return on equity shall be computed @15.5% as per Regulation 25 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 on equity determined in accordance with Regulation 24. The relevant Sub Regulation 25 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 is reproduced below:

(1) Return on Equity shall be computed @ 15.5% on the paid up

equity capital determined in accordance with Regulation 24.

5.12 Thus, Commission works out return on equity for FY 2016-17 as under:-

Table No.10: **Return on equity allowed by the Commission for the period 17.04.2016 to 31.03.2017.**

(Rs. Crore)

Sr. No.	Particulars	Amount
1.	Capital Cost as on 17.04.2016	3058.37
2.	Equity as on 17.4.2016	1118.06
3.	Equity - 30% of Capital Cost	917.51
4.	Normative Loan (2-3)	200.55
5.	Addition during the year	0.00
6.	Closing Equity as on 31.03.2017	917.51
7.	Average Equity	917.51
8.	Rate of Return on Equity	15.50%
9.	Return on Equity for FY 2016-17 (7 x 8)	142.21
10.	**Return on Equity (142.21x349/365)**	**135.98**

Accordingly, the Commission allows the return on equity of Rs. 135.98 Crore for the period 17.04.2016 to 31.03.2017.

6.0 Interest & Finance charges

GVK's Submission

6.1 GVK has computed Interest on Loan Capital for FY 2016-2017 as per Regulation 26 of CERC Tariff Regulations, 2014, as under:

"***26. Interest on loan capital:***

(1) The loans arrived at in the manner indicated in regulation 19 shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2014 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2014 from the gross normative loan.

(3) The repayment for each of the year of the tariff period 2014-19 shall be deemed to be equal to the depreciation allowed for the corresponding

year/period. In case of decapitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of decapitalisation of such asset.

(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-

financing.

(9) *In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute: Provided that the beneficiaries or the long term transmission customers /DICs shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan.*

6.2 In terms of the foregoing, the interest on loan capital for FY 2016-17 has been computed as follows:

(a) Gross normative opening loan as on Station COD has been computed as the difference between the Opening capital cost as on Station COD (excluding undischarged liabilities) and the Normative opening equity considered for ROE computation.

(b) Loan repayment has been considered at normative basis being equal to depreciation.

(c) Actual Weighted Average Interest rate has been computed as ratio of the actual interest paid to the actual average loan as per annual accounts for FY 2016-17.

6.3 GVK in its petition has stated that the weighted average rate of interest has been calculated on the basis of average balance of actual individual loans at 13.96% (Including penal interest). Based on the same GVK had worked out interest on normative loan (pro-rata) of Rs. 403.92 Crore on average normative loan of Rs. 3017.01 Crore.

6.4 GVK in its revised submission received on 21.07.2020 has computed Interest on loan capital as per Regulation 26 of PSERC Regulations, 2005 and has submitted that the weighted average rate of interest has been calculated on the basis of average balance of actual individual loans at 13.22% (Including penal interest).

6.5 GVK in reply to the deficiencies, submitted the loan wise details of actual term loans availed from the commercial Banks/ Financial institutions, depicting opening balance of loan as on 17.04.2016, addition during the year, repayment of loan, closing balance as on 31.03.2017, interest rate, interest due and paid there- against on long term loans and working capital loans.

Accordingly, the revised computation of interest on loan for FY 2016-17 is as under:

Table No. 11: Interest on Loan submitted by GVK for FY 2016-17

(Rs. Crore)

Sr. No	Particulars	Estimated	Approved by the Commission	True-up
1.	Normative Loan – Opening		2140.86	2140.86
2.	Addition of loan due to Additional Capitalization during the period from COD to year end			-
3.	Less: Repayment of Loan during the Period (Normative; equal to Depreciation claimed for the year)		141.27	139.41
4.	Net Closing loan		1999.59	2001.45
5.	Average Normative Loan		2070.22	2071.15
6.	Actual Weighted Average Rate of Interest on Loan		13.25%	13.22%
7.	Interest on Normative Loan (Annualized)		274.30	273.82
8.	Interest on Normative Loan (pro rata)	404.72	225.51	261.81

6.6 GVK in its revised submission dated 21.08.2020 has submitted that in the petition no. 54 of 2017 it had originally claimed interest of Rs 451.91 Crore on actual average loan of Rs 3307.63 Crore as per Annual Audited Accounts. However, this

Commission in Order dated 17.01.2020 has worked out average long term loan as Rs. 2070.22 Crore based on normative parameters in terms of PSERC Tariff Regulations 2005.GVK further submitted that once normative approach has been adopted by the Commission there cannot be any further adjustments on the basis of actual expenses on account of it being less, the said position of law has been upheld by the Hon'ble Tribunal in Haryana Power Generation Co. Ltd v. Haryana Electricity Regulatory Commission judgement dated 31.07.2009 in Appeal no.42 & 43 of 2008.

6.7 GVK prayed that in the present case also, this Commission may be allow interest on normative loan as claimed (Rs.261.81 Crore) in terms of the PSERC Tariff Regulations 2005.

PSPCL's Submission

6.8 PSPCL vide Memo No. 5516 dated 23.06.2020 submitted that since the base figures for calculation of Interest on loan, being the capital cost of the project, the term loans for the project has been considered as the amounts claimed by GVK and not the amounts approved by this the Commission in its Final Tariff Order, the same are inadmissible.

6.9 PSPCL vide its submission dated 28.07.2020 and 10.08.2020 stated that GVK under the present head has submitted actual figures of interest on loan to be Rs. 273.82 Crore as against Rs. 274.30 Crore allowed by the Commission in its order dated 17.01.2020. However, GVK has also submitted an amount of Rs. 261.81 Crore as 'Interest on normative loan (Pro rata)' as against Rs. 225.51 Crore as approved by this Commission. As regards this difference of Rs. 36.3 Crore the Commission in its

Order dated 17.01.2020 has held as under:

"As per the Annual Audited Accounts of GVK the average loans for FY 2016-17 have been worked out to Rs.3307.63 Crore and the interest on this has been depicted as Rs. 451.91 Crore. However, GVK has a liability of Rs. 226.42 Crore towards interest accrued. The interest actually paid on long term loans is Rs. 225.49 (451.91-226.42) Crore.

Accordingly, the Commission considers the interest of Rs. 225.49 Crore which has been Actually paid by GVK during this year. The balance amount of interest i.e. Rs. 36.79 (262.28-225.49) Crore will be considered in the year in which year it will be paid by GVK."

Thus, the Commission held that this sum of Rs. 36.79 Crore (inclusive of finance charges) would be considered in the year in which the same is actually paid by GVK. However, in the present Petition, GVK has not provided any details whether the said amount has actually been paid or not in FY 2016-17. In the absence of such information, GVK's true-up claim under this head is inadmissible to that extent.

Commission's Analysis

6.10 The Commission had provisionally approved Interest and finance charges of Rs. 225.51 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.

6.11 Interest on long term loans is to be allowed as per Regulation 26 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005, which is as under:

26. INTEREST AND FINANCE CHARGES ON LOAN

(1) For Existing Loan Capital, Interest & finance charges shall be computed on the outstanding Loans, duly taking into account the rate of interest & schedule of repayment as per the Terms & Conditions of relevant agreements. The rate of interest shall be the actual rate of interest paid/payable by the Licensee(s) or the State Bank of India Advance rate as on April, 1 of the relevant year, wherever is lower.

(2) For New investments, Interest & finance charges shall be computed on the loans, duly taking into account the rate of interest & schedule of repayment as per the Terms & Conditions of relevant agreements. The rate of interest shall be the actual rate of interest paid/payable by the Licensee(s) or the State Bank of India Advance rate as on April, 1 of the relevant year, wherever is lower.

(3) The interest rate on the amount of equity above 30% treated as loan shall be the weighted average rate of interest on loan capital of the generating company / licensee

Provided that interest and finance charges of renegotiated loan agreements shall not be considered, if they result in higher charges. Provided further that interest and finance charges on works in progress shall be excluded and shall be considered as part of the capital cost.

(4) Interest charges on security deposits, if any, made by the consumers with a generating company/licensee, shall be considered at the rate specified by the Commission from time to time.

(5) In case any moratorium period is availed of, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.

(6) The Commission shall allow obligatory taxes on interest, commitment charges, finance charges (including guarantee fee payable to the Govt.) and any exchange

rate difference arising from foreign currency borrowings, as finance cost.

(7) Any saving in costs on account of subsequent restructuring of debt shall be shared between the consumers and the generating company / licensee in such ratio as may be decided by the Commission.

6.12 The Commission in its order dated 17.01.2020 has determined capital cost of the GVK's project as Rs. 3058.37 Crore and equity as Rs. 1118.06 Crore. Long term loans of Rs.1940.31 (3058.37–1118.06) Crore have been considered. The Commission has further considered additional loan of Rs. 200.55 Crore (equity in excess of 30%) as part of normative long term loans as per Regulation 24 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005 for the purpose of allowing interest. As such, the long term loans allowed for interest purpose workout to Rs. 2140.86 (1940.31+200.55) Crore. The depreciation for FY 2016-17 which has been worked out as Rs. 141.27 Crore in this Order is considered as re-payment of the long term loans as per Regulation 26(5) considering that there would be moratorium period in the 1st year of operation.

6.13 In the Annual Audited Accounts of GVK for FY 2016-17 interest charges were shown as Rs. 451.91 Crore. But in the Annual Audited Accounts of FY 2017-18, the previous year figures of interest charges for FY 2016-17 has been rearranged/regrouped as Rs. 448.37 Crore and Rs 3.54 (451.91 - 448.37) Crore has been shown as Other Finance Charges.

6.14 As per the Regulation, 26 (2) of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005, the rate of interest is to be considered at the actual rate of interest paid /payable by the licensee or the State bank of India advance rate as on April, 01 on the relevant year, whichever is lower. The State Bank of India Advance Rate (SBAR) as on 01.04.2016 was 14.05%. GVK in its revised submission dated 21.07.2020 has claimed weighted average rate of interest of 13.22% (including penal interest). During hearing on 29.07.2020, GVK was asked to submit the rate of penal interest included in 13.22%.GVK stated that weighted average rate of interest is only 13.22% and is exclusive of penal interest. The Commission considers the weighted average rate of interest of 13.22% for long term loans as claimed by the GVK in the revised submission dated 21.07.2020. Therefore, the Commission determines the interest on long term loans as under:

Table No.12: Interest on Long Term Loans determined by the Commission for the period 17.04.2016 to 31.03.2017

(Rs. Crore)

Sr. No.	Particulars	Amount
1.	Opening Long term Loans as on 17.04.2016	1940.31
2.	Add: Normative Loan	200.55
3.	Opening Long Term Loans	2140.86
4.	Addition during the year	0.00
5.	Re-payment of Loans (equal to depreciation)	141.27
6.	Closing Long Term Loans	1999.59
7.	Average Long Term Loans	2070.22
8.	Rate of Interest	13.22%
9.	Interest (7 x 8) for FY 2016-17	273.68
10.	**Interest (273.68 x 349/365)**	**261.69**

6.15 As per the Annual Audited Accounts of GVK for FY 2016-17 interest has been worked out to Rs. 448.37 Crore but GVK has a liability of Rs. 226.42 Crore towards interest accrued. The interest actually paid on long term loans is only Rs. 221.95 (448.37-226.42) Crore.

Accordingly, the Commission approves the interest of Rs. 221.95 Crore which has been actually paid by GVK during FY 2016-17. The balance amount of interest i.e. Rs. 39.74 (261.69 – 221.95) Crore will be considered in the year in which it will be paid by GVK.

6.16 **Finance Charges**:

GVK has not claimed any finance charges for FY 2016-17 but Rs. 3.54 Crore has been shown as other finance charges in the Annual Audited Accounts for FY 2016-17 on loan amount of Rs. 3366.49 Crore. Finance charges works out as Rs. 2.05 Crore for FY 2016-17 on a loan of Rs. 1940.31 Crore and Rs 1.96 (2.05x349/365) Crore is allowed proportionately for the period 17.04.2016 to 31.03.2017. Thus, the total interest and finance charges for FY 2016-17 work out to Rs. 224.00(221.95+2.05) Crore.

Accordingly, the Commission allows interest and finance charges of Rs. 223.91(221.95+1.96) Crore for the period 17.04.2016 to 31.03.2017.

7.0 Interest on Working Capital

GVK's Submission

7.1 GVK has computed Interest on Working Capital in terms of Regulation 28 of CERC Tariff Regulations, 2014. GVK submitted that in terms of Regulation 28 of the CERC Tariff Regulations, 2014 the Working Capital Interest rate applicable to GVK is 12.80% based on which Interest on Working Capital works out to Rs. 79.63 Crore.

7.2 In its revised submission dated 21.07.2020 and 21.08.2020 GVK has computed Working Capital and Interest on Working Capital as per Regulation 30(3) of PSERC Tariff Regulations

2005. GVK has submitted computation of receivables for working capital requirement as under:

Table No.13: Computation of receivables for working capital requirement by GVK

(Rs. Crore)

Sr.No	Particular	Amount
1	Fuel Cost	66.45
2	O&M Expenses	30.78
3	Depreciation	139.41
4	Return on Equity	135.98
5	Interest of finance charges/Loan	261.81
6	Interest on working capital loan	15.50
7	**Total (Receivables)**	**649.93**

7.3 GVK in its revised submission on 21.08.2020 has submitted the computation of Interest on Working Capital for true-up of FY 2016-17 as shown in the following table:

Table No.14: Interest on Working Capital claimed by GVK for FY 2016-17

(Rs Crore)

Sr. No.	Particulars	Approved by the Commission	Amount
1	Maintenance Spares @ 15% of O&M Expenses	4.56	4.62
2	Fuel Cost for two months	8.68	11.08
3	O&M Expenses for one month	2.53	2.57
4	Receivable for two months	99.58	108.24
5	**Total**	**115.35**	**126.50**
6	Rate of Interest	10.62%	12.25%
7	**Interest on Working Capital**	**12.25**	**15.50**

PSPCL's Submission

7.4 PSPCL vide its submission dated 28.07.2020 and 10.08.2020 submitted that as per Regulation 30 of the PSERC Tariff Regulations, 2005 working capital for a generating company and interest on working capital is required to be calculated as under:

"30. WORKING CAPITAL AND INTEREST RATE ON WORKING CAPITAL

(3) working capital for a generating company shall be the sum of the following:

(i) Fuel Cost for two months

(ii) operation and Maintenance expenses for one month

(iii) Receivables equivalent to two months

(iv) Maintenance spares @15% of O&M expenses,

In its order dated 17.01.2020, the Commission has observed that as per the Annual Audited Accounts of GVK for FY 2016-17, the fuel cost is Rs. 66.45 Crore. However, as per the information available with the Commission in Petition No.68/2017 filed by GVK regarding billing disputes, the fuel cost for the period 16.04.2016 to 31.03.2017 given by PSPCL to GVK is Rs. 52.07 Crore. As such, fuel cost of Rs. 52.07 Crore have been considered by the Commission for determination of receivables. As regards the O&M Expenses, of the Commission has approved a pro-rata sum of Rs. 30.41 Crore for the period 17.4.2016 to 31.03.2017, depreciation was considered as Rs.141.27 Crore, return on equity at Rs.135.98 Crore and interest and finance charge at Rs.225.51 Crore. PSPCL submitted that GVK's claim in the true up petition is subject to the Commission allowing the said true-up figures after consideration of the objections of the Respondent in the present Reply and after due prudence check. As regards the cost of fuel for 2 months, GVK has claimed a revision of Rs. 2.40 Crore without providing any justification thereto. As per the Annual Audited Accounts for FY 2016-17 and GVK's own admission during the proceedings in Petition No.68/2017, the annual fuel cost of GVK is Rs. 52.07 Crore, based on which fuel cost for 2 months works out to Rs. 8.68 Crore. Thus, GVK cannot be permitted to deviate from the said settled and accepted fuel cost. It may also be mentioned here that billing of the energy charges (which includes in itself the fuel costs) for GVK's project is being done on the basis of energy scheduled by PSPCL. The Energy charge rate is calculated on the basis of normative parameters instead of actual and in accordance with directions of the Commission in its the Order dated 6.03.2019.

Commission's Analysis

7.5 The Commission had provisionally approved Interest on working capital of Rs.12.25 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.

7.6 As per the Annual Audited Accounts of GVK for FY 2016-17 the fuel cost was Rs 66.45 Crore. The energy charges paid by PSPCL during FY 2016-17 were originally Rs. 52.07 Crore which were later revised in terms of the Commission's Order dated 06.03.2019 to Rs. 55.12 Crore including Rs. 3.05 Crore as arrears. Thus, fuel cost of Rs. 55.12 Crore has been considered for determination of receivables for FY 2016-17.

7.7 The Working Capital and Interest rate on Working capital has been determined as per Regulation 30 of PSERC (Terms and Conditions for determination of Tariff), Regulation 2005, which is as under:

30. WORKING CAPITAL AND INTEREST RATE ON WORKING CAPITAL

****

(3) Working capital for a generating company shall be the sum of the following:
(i) Fuel Cost for two months
(ii) Operation and Maintenance expenses for one month
(iii) Receivables equivalent to two months

(iv) Maintenance spares @15% of O&M expenses

****

(5) The rate of interest on working capital shall be equal to the actual rate of interest paid/ payable on loans by the licensee (s) or the State Bank of India Advance Rate as on April 1 of the relevant year, whichever is lower. The interest on working capital shall be payable on normative basis notwithstanding that the licensee (s) has not taken working capital loan from any outside agency or has exceeded the working capital loan amount worked out on the normative figures.

7.8 The Commission considers the weighted average rate of interest of 12.25% for working capital loans as claimed by the GVK in the revised submission dated 21.07.2020. The State Bank of India advance rate as on 01.04.2016 was 14.05%.

7.9 The details of Working Capital requirement and allowable interest thereon is depicted in the following table:

Table No.15: Working Capital and interest thereon allowed by the Commission for the period 17.04.2016 to 31.03.2017.

(Rs. Crore)

Sr. No.	Particulars	Amount
1.	Maintenance spares @ 15% of O&M (15% of 30.41)	4.56
2.	Fuel Cost for 2 months (55.12*60/349)	9.48
3.	O & M expenses for 1 month (30.41*30/349)	2.61
4.	Receivables for 2 months	102.24
5.	Total Working capital	118.89
6.	Weighted Average Rate of Interest	12.25%
7.	**Interest on working capital for 17.04.2016 to 31.03.2017**	**14.56**

Accordingly, the Commission allows interest on Working Capital of Rs. 14.56 Crore for the period 17.04.2016 to 31.03.2017.

8.0 Tax on Income:

GVK's Submission

8.1 GVK submitted that Regulation 32 of the PSERC Tariff Regulations provides that taxes on the income of a generating company shall be computed as an expense and shall be recovered from consumers.

8.2 GVK submitted that tax on income liable to be paid for FY 2016-2017 is Nil.

PSPCL's Submission:

8.3 PSPCL vide its submission dated 10.08.2020 submitted that the claim of GVK as regards Tax on Income may be allowed by the Commission in accordance with applicable Regulations framed by the Commission after due prudence check.

Commission's Analysis:

8.4 Tax on income is allowable as per Regulation 32 of PSERC (Terms and Condition for Determination of Tariff Regulations, 2005) (amended from time to time). It is stipulated that tax on income shall be limited to tax on return on equity allowed, as under:

> "***32. TAX ON INCOME***
>
> *(1) Obligatory taxes, if any, on the income of the generating company or the licensee from its core/licensed business shall be computed as an expense and shall be recovered from the customers/consumers.*
>
> *Provided that tax on any income other than the core / licensed business shall not constitute a pass through component in tariff and tax on such other income shall be payable by the generating company or the licensee.*
>
> *(2) Tax on income, if actually liable to be paid, shall be limited to tax on return on equity allowed, excluding incentives.*
>
> *(3) The Tax on income shall be considered at income tax rate including surcharge, cess, etc as applicable during the relevant year in accordance with the provisions of Income Tax Act, 1961 duly amended from time to time.*
>
> *(4) The benefits of tax holiday and the credit for carrying forward losses applicable as per the provisions of the Income Tax Act, 1961 shall be fully passed on to the customers/consumers.*"

The Commission allows income tax paid as Nil for the period 17.04.2016 to 31.03.2017 based on the Annual Audited Accounts .

9.0 Non-Tariff Income

GVK's Submission

9.1 GVK submitted that Regulation 37 of the PSERC Tariff Regulations provides components of income, which shall be treated as non-tariff income. In terms thereof the following components of income shall be treated as non-tariff income:

9.2 The non-tariff income of GVK for FY 2016-2017 is as under:

Table No. 16: Non-tariff income claimed by GVK. (Rs. Crore)

Sr. No.	Particulars	Amount
1.	Interest on FDR	0.18
2.	Sale of Fly Ash	0.32
3.	**Total**	**0.50**

PSPCL's Submission

9.3 PSPCL vide its submission dated 10.08.2020 submitted that the claim of GVK as regards Non-Tariff Income may be allowed by the Commission in accordance with applicable Regulations framed by the Commission after due prudence check.

Commission's Analysis

9.4 The Non-Tariff Income has been determined as per Regulation-34 of PSERC (Terms and Condition for Determination of Tariff Regulations, 2005) (amended from time to time).

9.5 The Commission notes that Audited Annual Accounts of GVK for FY 2016-17 has shown "Other income" which includes income from bank deposits and fly ash of Rs 0.18 Crore and Rs. 0.32 Crore respectively. As per para 20.3.4 of the Commission's Order dated 17.01.2020 in Petition no. 54 of

2017, GVK had diverted the funds meant for capital expenditure out of the loan taken from financial institutions by investment in Mutual Funds. The Commission has neither considered interest paid on loans used for such other investments nor income earned from such other business/ investment as part of the capital expenditure. Accordingly, the Commissions determines Non-Tariff Income as Rs. 0.32 Crore (sale of fly ash) for FY2016-17 and allows Non-tariff income as Rs. 0.32 Crore.

Accordingly, the Commission approves Non-Tariff Income as Rs. 0.32 Crore for the period 17.04.2016 to 31.03.2017.

10.0 Capacity charges for FY 2016-17

10.1 The Commission had provisionally approved Capacity charges of Rs. 545.42 Crore for GVK for the period 17.04.2016 to 31.03.2017 in the order dated 17.01.2020.

10.2 The Annual Fixed Charges (AFC) for the period 17.04.2016 to 31.03.2017, as projected by GVK in the Petition, revised in its additional submission received on 21.07.2020 & 21.08.2020 and approved by the Commission is summarized in the following table:-

Table No.17: **Annual fixed charges approved by the Commission for the period 17.04.2016 to 31.03.2017**

(Rs Crore)

Sr. No.	Particulars	Allowed by Order dated 17.1.2020	Claimed by GVK in original Petition	Claimed by GVK in revised submission received on 21.08.2020	Approved by the Commission
1.	O&M Expenses	30.41	139.81	30.78	30.41
2.	Depreciation	141.27	196.24	139.41	135.08
3.	Interest charges	225.51	403.92	261.81	223.91
4.	Return on Equity	135.98	171.25	135.98	135.98
5.	Interest on Working Capital	12.25	79.63	15.50	14.56
6.	Income Tax	0.00	0.00	0.00	0.00
7.	**Total Expenses**	**545.42**	**990.85**	**583.48**	**539.94**
8.	Less: Non-Tariff Income	0.00	0.50	0.50	0.32
9.	**Annual Fixed Cost**	**545.42**	**990.35**	**582.98**	**539.62**

10.3 GVK shall be entitled for payment of capacity charges in accordance with Regulation 30 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 (as amended) where the same is not specified in the PSERC Tariff Regulations.

11.0 Generation for FY 2016-17

GVK's submission:

11.1 GVK has submitted the generation data for FY 2016-17 in the petition and its submissions dated 12.03.2020 in response to the Commission's interim Order dated 07.02.2020 as hereunder:

Table No. 18: Generation data submitted by GVK for FY 2016-17

Sr. No.	Description	April 2016	July 2016	August 2016	Total for FY 2016-17
1.	Gross Generation in MU	31.05	83.68	82.36	197.09
2.	Actual Generation in MU	26	79	87	192
3.	Plant Availability Factor (%)	13.17	22.89	22.53	4.71 (Cumulative)
4.	Declared Capacity in MU	31	84	82	197
5.	Scheduled Generation in MU	23.96	71.12	80.24	175.32

11.2 GVK vide its revised submissions received on 21.07.2020 submitted that the project is operating as part of the interconnected grid and abides by the Rules and Regulations framed by the CERC and the Commission to ensure grid safety and interconnected grid operations. However, GVK suffered loss of generation on account of backing down instructions received from Punjab State Load Despatch Centre (SLDC), even though the Project was available for generation. The revised Gross Generation (MU) and Scheduled Generation (MU), submitted by GVK is as under:

Table No. 19: Generation data submitted by GVK for FY 2016-17.

Sr. No.	Description	April 2016	July 2016	August 2016	Total for FY 2016-17
1.	Gross Generation in MU	26	79	87	192
2.	Scheduled Generation in MU	23.96	71.12	80.24	175.32

11.3 GVK further submitted that Regulation 36 (A) of CERC Tariff Regulations provide the norms of operation and in turn provide that Normative Annual Plant Availability Factor (NAPAF) for thermal generating stations shall be 85% and 83% in case of shortage of coal and uncertainty of coal supply on sustained basis. While normative PAF is 83%, the PAF has been impacted on account of force majeure event being cancellation of the captive coal block. In terms of Article 12.3(ii) read with Article 12.7 (a) and (b) of the Amended and Restated PPA, GVK is excused from performance and is entitled to compensation on account of unavailability of coal. In terms of the foregoing, PAF ought to be considered corresponding to actual coal available. Actual cumulative PAF for FY 2016-17 was 4.707%.

GVK vide its submission dated 21.08.2020 in reply to PSPCL's averment that the Gross Generation stated by GVK is in fact the Declared Capacity of the project as per the State Energy Accounts (SEA) issued by SLDC submitted that for the purposes of payment of tariff, capacity charges are payable as per the declared capacity of GVK and the said charges are to be paid irrespective of scheduling/dispatch by PSPCL. Further in terms of Article 4.3.1 of the Amended and Restated PPA, PSPCL is bound to pay capacity charges based on capacity declared available by GVK.

PSPCL's submission:

11.4 PSPCL vide its submissions dated 27.05.2020, 23.06.2020, 28.07.2020 and 10.08.2020 submitted as under:

The payment of fixed charges is based on the quantum of energy declared available as certified by SLDC. The quantum must be certified by the SLDC, which is a statutory authority. The certification of SLDC is on ex-bus basis, and on this GVK is entitled to the fixed charges at tariff determined by the Commission. As per the provisions in the Regulations, the payment of monthly fixed charges is based on the AFC, the Cumulative Plant Availability Factor and Normative PAF. The cumulative PAF and Normative PAF must be certified by the SLDC which is a statutory authority.

Under the head 'Installed Capacity & Generation', GVK has submitted gross generation during FY 2016-17 as 197.09 MU which has been revised to 192 MU. However, this is not the Gross Generation but is rather the Declared Capacity (DC) of the project, which is as per the State Energy Accounts (SEA) issued by SLDC. The Commission was requested to rely upon month-wise DC of GVK's project on which the billing had been done in respect of capacity charges for FY 2016-17. The payment of energy charges to GVK is being done as per the month wise energy scheduled by PSPCL and the billing had been done as per State Energy Accounts issued by the SLDC for FY 2016-17.

Commission's Analysis

11.5 The issue raised by GVK on the force majeure due to non availability of coal has already been decided by the

Commission in its Order dated 01.02.2016 common to Petition no. 65 of 2013 & 33 of 2015, Order dated 21.05.2018 in Petition no. 45 of 2017 and Order dated 06.03.2019 in Petition no. 68 of 2017.

11.6 As checked up from the SLDC's website, in terms of the Final State Energy Accounts for FY 2016-17 containing the data on the declared capacity, plant availability factor and the scheduled energy for FY 2016-17, the details are as under:

Table No. 20: **Declared Capacity and Scheduled Generation as per SLDC for FY 2016-17**

Sr. No.	Description	April 2016	July 2016	August 2016	Total for FY 2016-17
1.	Declared Capacity in MU	31.059	83.686	82.360	197.105
2.	Scheduled Generation in MU	23.955	71.124	80.241	175.320

12.0 Energy Charges for FY 2016-17

GVK's submission:

12.1 GVK has submitted the details of components of the Energy Charge in the petition as hereunder:

Table No. 21: Details of components of the Energy Charge submitted by GVK

Sr. No	Description	April 2016	July 2016	August 2016
1.	Aux Consumption (%)	8.02	8.46	8.57
2.	Station Heat Rate (kCal/kWh)	2715	2687	2521
3.	Fuel Oil Consumption (HDO/LDO) (KL)	159.31	429.34	422.57
4.	GCV of Coal (kCal/kg)	3686	4537	4006
5.	Landed Price of Coal (Rs./MT)	6211	5701	5429

12.2 Further, the fuel cost details as furnished by GVK in response to the information sought by the Commission vide its Order dated 07.02.2020 are as under:

Table No. 22: Details of fuel cost submitted by GVK for FY 2016-17

Sr. No.	Item	Unit	Actual
1.	Generation	MU	192
2.	Auxiliary Consumption	%	8.85
3.	Net Generation	MU	175
4.	Station Heat Rate	Kcal/kwh	2621
5.	Specific Oil Consumption	ml/kwh	3.21
6.	Calorific Value of Oil	Kcal/Litre	10410
7.	Calorific Value of Coal (Weighted Average)	Kcal/Kg	3944
8.	Overall Heat (1*4)	Gcal	503232
9.	Heat from Oil (1*5*6/1000)	Gcal	6416
10.	Heat From Coal (8-9)	Gcal	496816
11.	Total Oil Consumption	KL	615.40
12.	Transit Loss of Coal	%	5.4
13.	Total Coal Consumption excluding transit and other losses	Tonnes	1,11,084
14.	Quantity of imported / captive coal priced on FOR basis	Tonnes	-
15.	Quantity of coal not priced on FOR basis	Tonnes	-
16.	Total Quantity of Coal required (Including Transit Loss and other losses) - As per Books of Account	Tonnes	1,17,083
17.	Price of Oil	Rs/ KL	18050
18.	Price of Coal	Rs. / Tonne	5581
19.	Total Cost of Oil (As per Audited Financial)	Rs. Crores	1.11
20.	Total Coal Cost (As per Audited Financial)	Rs. Crores	65.34
21.	Total Fuel Cost	Rs. Crores	66.45

12.3 GVK vide its revised submissions received on 21.07.2020 and 21.08.2020 stated that since, GVK's Project was commissioned on 16.04.2016 and accordingly the CERC Tariff Regulations 2014 would be applicable to GVK's Project for determination of energy charges. GVK further submitted that in terms of the formula mentioned in Regulation 30(6)(a) of the CERC Tariff Regulations, 2014, energy charges are to be determined taking into account the weighted average landed cost of fuel. GVK further submitted details of components of the Energy Charge as hereunder**:**

i) Auxiliary Consumption:

The normative auxiliary energy consumption for Coal-based generating stations as per Regulation 36(E)(a) of the CERC Tariff Regulations, 2014 is 8.5% for a unit of 200 MW series. Further, for thermal generating stations with induced draft cooling towers, additional 0.5% is allowed. Thus, the normative auxiliary consumption has been considered at 9% for the computation of energy charge. On 21.08.2020, while reiterating its earlier submissions, GVK submitted that While PSPCL has agreed that for the purposes of billing, normative auxiliary consumption of 9% shall be considered, PSPCL is yet to make payments towards the same. It is submitted that from FY 2016-17 to January 2020, PSPCL has not paid any amounts towards auxiliary consumption claimed by GVK.

GVK further submitted that the Declared Capacity data on ex-bus basis considered by PSPCL as energy declared during bill period ought to be grossed up by 9% in order to arrive at the total available capacity at the generator terminal so as to include auxiliary consumption in the total amounts payable to GVK. Auxiliary consumption is a legitimate head which ought to be included in the available energy for payment of capacity charges. In this context, it is pertinent to note that in terms of Regulation 3(44) and 3(45) read with 30(3) and 30 (6) of CERC Tariff Regulations 2014, ‘Normative Annual Plant Availability’ and ‘Plant Availability Factor’ are to be calculated by grossing up the Declared Capacity with the normative auxiliary energy consumption.

It is submitted that capacity of the Project utilized for Auxiliary Consumption is critical for operations of the Project and GVK ought to be paid fixed charges for the same so as to continue to operate the Project. It is pertinent to note that for the month of January2020, PSPCL has paid GVK auxiliary consumption at 9% as part of the fixed charges. Accordingly, PSPCL ought to pay fixed charges taking into account auxiliary consumption for FY 2016-17.

The Commission in Order dated 06.03.2019 in Petition No. 68 of 2017 has held that once the capital cost of the Project is determined in petition No. 54 of 2017, PAFM/PAFY would be worked out to determine capacity charges payable by it. However, in Order dated 17.01.2020 in Petition No. 54 of 2017, the Commission did not return any findings on auxiliary consumption. GVK has filed Appeal No. 189 of 2019 against Order dated 06.03.2019 and Appeal No. 41 of 2020 against Order dated 17.01.2020 and the same are pending. GVK reserves its rights in this regard

ii) Design Heat Rate:

The Design Heat Rate for the Project under the EPC contract is 2221 Kcal/kWh. Regulation 36(C)(b) of the CERC Tariff Regulations specifies that for tariff calculation, the design station heat rate is to be multiplied by a factor of 1.045 for a new coal based thermal power plant. Accordingly, the gross station heat rate of the Project for tariff calculation purpose comes out to be 2321 kcal/kWh, which has been considered for Energy Charge calculation.

iii) Specific Fuel Oil Consumption:

Regulation 36 (D) of the CERC Tariff Regulations, 2014 stipulates specific oil consumption of 0.5 ml/kWh for a coal-based generating station.

iv) GCV of Coal:

For Energy Charge Rate calculation, the GCV of coal has been computed as the weighted average GCV of coal on as received basis.

v) Landed Price of Coal:

In terms of the Regulation 23 of the CERC Tariff Regulations, GVK is entitled to the landed fuel cost of the primary fuel. The landed price of coal is computed as the weighted average landed price of coal, blending ratio and calorific value for the purposes of computation of energy charges. The landed price of coal also includes the price incurred by GVK towards surface transportation from mining point/extraction point till point of delivery within the mine (internal surface transport) and price of surface transportation from delivery point in the mine till the railway siding (external surface transportation).

GVK vide its submission dated 21.08.2020 submitted that Regulations framed under Section 178 or 181 of the Electricity Act override power purchase agreements as held by Constitutional Bench of the Hon’ble Supreme Court in the PTC Judgment. The said position has been upheld by the Hon’ble Tribunal in Odisha Power Generation Corporation Ltd. vs Odisha Electricity Regulatory Commission: (2017 ELR (APTEL) 0538) (Para 28, 30 & 32) wherein it was held that PPA, even though approved by the regulatory commission, cannot override the tariff regulations and tariff for supply of power has to be determined in terms of applicable regulations. GVK has further submitted that the present case is a cost plus project, in terms of Section 62 of Electricity Act, hence the issue of capping transportation charges does not arise. As per submissions of GVK, the cancellation of the Captive Coal Blocks is an event of force majeure and change in law event and therefore, GVK is entitled to compensation for the consequential impact for the same.

GVK has submitted that as regards surface transportation costs, PSPCL has contended that the same is to be limited to the rates prescribed by BCCL for upto 20 km and GVK is required to submit separate bills in order to claim in consonance with rates prescribed by BCCL, as decided by the Commission in Order dated 06.03.2020 in Petition No. 68 of 2017. GVK submitted that it has challenged the directions of the Commission in Order dated 06.03.2020 including limiting surface transportation charges claimed by GVK to the rates prescribed by BCCL vide Appeal no. 189 of 2019 and the same is pending adjudication. GVK has further submitted that PSPCL's contention that the Commission has already granted relief to GVK for change in law and force majeure events i.e. cancellation of the captive coal blocks by allowing pass through of coal cost procured under Shakti Scheme is misplaced and denied. GVK has submitted that coal supply under Shakti Scheme is not subject matter of the present petition as Shakti Scheme supply commenced in March 2018 whereas the present Petition pertains to FY 2016-17. Order dated 06.03.2019 has been challenged by GVK by way of Appeal No. 189 of 2019 before the Hon'ble Appellate Tribunal for Electricity and GVK reserves its rights in this regard.

GVK has submitted that in this context, it may be noted that for FY 2016-17, GVK has procured coal from e-auction sources and imported coal and did not source any coal from BCCL. Therefore, comparison of GVK's surface transportation costs with that of BCCL is not tenable. The rates paid by GVK for surface transportation have to be discovered by way of a competitive bidding process and ought to be allowed on the basis of actuals. Furthermore, the surface transportation charges paid by GVK does not depend solely on the distance between the railway siding and the mine. GVK pays different rates to the contractors for transportation of coal by road which is dependent on uncontrollable factors such as:

- Geographical location of the mine and accessibility to the mine and railway siding.
- Law and order problems and restrictions on movement of trucks

The above factors have a bearing on the rates charged by contractors (discovered by way of transparent bidding process) operating in that area, which are beyond the control of GVK. Therefore, the normative approach of limiting surface transportation charges to BCCL rates result in under-recovery of costs incurred by GVK, contrary to the PSERC and CERC Tariff Regulations.

The Hon’ble Supreme Court in the Nabha Power Ltd vs PSPCL: (2018) 11 SCC 508 (Para 63, 64) had held that:

- The mode of transportation of coal is irrelevant and the cost incurred from point to point transportation of coal has to be reimbursed to the generator.
- All cost of coal incurred up to the Project site must be reimbursed to the generator on actual.

Further, the said directions were reiterated by the Hon’ble Supreme Court by Order dated 07.08.2019 in a contempt Petition filed by Nabha Power Ltd. against PSPCL for non-compliance of directions and directed PSPCL to pay the same on actuals. In the present case PSERC Tariff Regulations and CERC Tariff Regulations allow landed cost of fuel on actuals, which includes recovery of cost of coal, cost of surface transportation and cost of railway transportation as incurred by GVK on actuals. However, the Commission has limited surface transportation charges payable to GVK to BCCL rates, contrary to the extant Regulations. While doing so the Commission has neither held that GVK has acted imprudently, nor is there any allegation of profiteering or related party transaction on GVK. More importantly, neither GVK nor PSPCL asked for limiting surface transportation charges payable to GVK.

GVK has submitted that it has come to the knowledge of GVK that PSPCL is paying Nabha Power Ltd. Surface transportation charges on actuals based on the rates being charged by the agencies appointed by Nabha Power for surface transportation. These charges vary by location and distance of the coal mine and PSPCL pays Nabha Power based on actual distance travelled and rates charged. In case of Nabha Power there is no benchmarking to CCL or BCCL surface transportation cost. As per information available with GVK, the distance and the cost of surface transportation varies from Rs 445 per MT to Rs 1400 per MT. However, PSPCL has not raised any objection to such distances (to the best of GVK's knowledge) and pays Nabha Power based on distances and rates actually charged. In fact, PSPCL, in Appeal No. 192 of 2019 (filed by PSPCL challenging Order dated 06.03.2019), has admitted that it is paying Nabha Power Ltd. at actual rates and in any event following a methodology different from that of GVK. It is submitted that PSPCL is paying Nabha Power Ltd. tariff which has been discovered by way of competitive bidding process in terms of Section 63 of the Electricity Act, 2003. In GVK's case, the tariff is to be determined on the basis of the PSERC Tariff Regulations which allow for recovery of energy charges on actuals.

GVK submitted that if benchmarking of the surface transportation charge was permissible, Nabha Power Ltd should also have been limited to actuals surface transportation charges or rates charged by BCCL. However, Nabha Power Ltd. is able to recover the cost on actuals whereas surface transportation charges payable to GVK are limited the rates charged by BCCL.

12.4 The revised parameters submitted by GVK on actual basis are summarized as under:

Table No. 23: Revised parameters on actual basis submitted by GVK.

Sr. No.	Month	Apr-16	Jul-16	Aug-16
1.	Coal Consumption in MT	20,378.70	51,633.98	45071*
2.	Auxiliary Consumption in MU	2	8	7
3.	Heat Rate (Kcal/Kwh)	2,715	2,687	2,521
4.	HFO/LDO Consumption(KL)	83	253	279
5.	GCV (Kcal/Kg)	3,686	4,537	4,006
6.	Landed price of Coal (Rs./MT)	5836	5670	5363

**On pointing out by PSPCL, GVK in the revised submission received on 21.07.2020 has included the coal consumption of 3163 MT originally shown for the month March 2017, in the coal consumption for August, 2016, which originally was submitted as 41908 MT.*

Based on the above aspects, the energy charge computed for the tariff period of FY 2016-17, on actual costs incurred by GVK is as under:

Table No.24: Energy charges computed for FY 2016-17 on actual cost by GVK

Sr. No.	Month	Apr-16	Jul-16	Aug-16
1.	Energy Charges (Rs./Unit)	4.46	3.36	3.47

GVK submitted that one of the submissions of GVK before the Commission in Petition No. 65 of 2013 and Petition No.33 of 2015 was that it was not possible to compute energy charges due to cancellation of the Tokisud and Pachwara captive coal blocks. The Arbitral Tribunal having taken note of the same, held that the Commission will determine the tariff payable to GVK. This understanding is also consistent with Order dated 11.06.2018 passed by the Commission in Petition No. 68 of 2017. In view of the foregoing, it is submitted that Order dated 01.02.2016 was an interim order, which ceased to operate as Arbitral Tribunal held that the cancellation of the captive coal blocks is an event of force majeure and change in law. The assertion that GVK has accepted the Order dated 01.02.2016 as final determination of fuel charges is incorrect. In the proceedings before the Arbitral Tribunal, GVK has specifically sought relief against the capping of the coal as evident from prayer (e) below:

(a) Declare that the Cancellation of the Coal Blocks pursuant to the judgment of the Hon’ble Supreme Court dated 25.08.2014 and Order dated 24.09.2014 is Change in Law Event in terms of Article 13 of the PPA.

(b) Declare that the Promulgation of the Ordinance is a Change in Law event in terms of Article 13 of the PPA.

(c) Declare that the Cancellation of the Coal Blocks pursuant to the judgment of the Hon’ble Supreme Court dated 25.08.2014 and Order dated 24.09.2014 is Force Majeure Event in terms of Article 12 of the PPA.

(d) Declare that the Promulgation of the Ordinance is a Force Majeure Event in terms of Article 12 of the PPA.

(e) Devise an alternate mechanism for the sourcing of Fuel in terms of the suggestions provided by the Claimant in Paragraph 109 to 115 of the Statement of Claim including necessary amendments to the Amended and Restated PPA;

(f) Grant consequential extension of SCOD till the issue of procurement of fuel is decided by this Hon’ble Commission.

Therefore, GVK has always proceeded on the basis that Order dated 01.02.2016 was an interim order and fuel cost has to be on the basis of actuals since cancellation of the captive coal block is an event of change in law and force majeure.

GVK further submitted that the Hon’ble Tribunal’s judgment dated 21.12.2017 in Appeal No. 193 of 2017 titled GMR Kamalanga Energy Limited v CERC (Para 59, 62 – 64), has upheld that cancellation of captive coal blocks is a change in law event and accordingly GMR Kamalanga Energy Ltd was entitled to compensation for expenditure incurred in procuring coal from alternate sources to meet the shortfall of coal from its assured sources. GVK is entitled to compensation for the change in law event i.e. cancellation of the captive coal blocks such that GVK is restored to the same economic position as if change in law event did not take place in terms of Article 13 of the Amended and Restated PPA. The said compensation would include recovery of cost of coal procured from sources such as e-auction of coal and imported coal on actuals including reimbursing GVK, for the cost of fuel including transportation charges. Further, energy charges are payable on actuals.

PSPCL's submission:

12.5 PSPCL vide letter dated 27.05.2020, 23.06.2020, 28.07.2020 and 10.08.2020 submitted as under:

a) PSPCL submitted that Regulation 36 of the CERC Tariff Regulations, 2014 provide for a normative PAF of 85% for all thermal generating plants and 83% in case of any shortage of fuel. GVK's has contented that it is entitled to compensation due to unavailability of coal thereby entitling its plant to have PAF corresponding to actual coal availability. The actual cumulative PAF of GVK's plant for FY 2016-17 has been 4.707%. CERC Tariff Regulations while making the normative PAF of 83% instead of 85% itself contemplate a relief when there is shortage of supply of coal. Thus, GVK cannot be allowed to seek a dispensation more that what has already been provided under the Regulations. Secondly, at the time of declaration of COD, GVK had undertaken that it had sufficient fuel to run the plant for 2 to 2½ years at its full capacity i.e. GVK had sufficient fuel to deliver the entire contracted capacity in FY 2016-17. However, GVK could achieve a PAF of only 4.707% during FY 2016-17. Therefore, GVK is not entitled for any further relief on its alleged claim of force-majeure as regards PAF when the Regulations are clear. The Commission while passing its Order dated 27.05.2019 in Petition No. 01/ 2018, specifically took strict note of the fact that despite directions from the Commission to procure the balance coal at the earliest, GVK has still not been able to procure the same. As such, GVK has not taken any reasonable steps to mitigate the consequential impact of the force majeure on its coal availability, thereby dis-entitling it from any dispensation as regards change in PAF and the same ought to be as prescribed under the Regulations which is 85%.

b) With regard to Design Heat Rate and specific oil consumption, PSPCL submitted that computation of energy charges is required to be done strictly in terms of the formula as per Regulation 30(6) of the CERC Tariff Regulations, 2014 as per Order dated 06.03.2019 passed in Petition No. 68/2017. Thus, the norms as prescribed under the said Regulations may be applied to GVK's project as well.

c) With regard to surface transportation cost in the landed price of coal, PSPCL submitted that GVK has considered weighted average landed cost of coal inclusive of the price of surface transportation from the delivery point in the mine till the railway siding (external STC). The Commission in its Order dated 06.03.2019, has categorically held that in case of any surface transportation cost incurred by GVK beyond the pick-up point within the mine (external STC), the payment of the same would be limited to the cost incurred to carry the coal to the nearest railway siding and would be as per the rates prescribed by M/s

Bharat Coking Coal Ltd. (BCCL) upto 20KM and the said charges would be charged by the Coal Company with separate bills for cost of coal and STC. Since, no stay has been granted by the Hon'ble APTEL in favour of GVK in Appeal No.189/2019, as such, the above findings of the Commission are binding upon GVK. Therefore, in order to claim charges for any external STC, GVK is required to submit separate bills in consonance with the rates prescribed by M/s BCCL as decided by the Commission in the above said Order.

d) PSPCL has pointed out that GVK has submitted that total coal consumed by GVK during the month of March,2017 was 3163.04 MT of coal. However, as per the state energy account issued by SLDC for the month of March-2017, both the Declared Capacity (DC) of the plant and scheduled energy (SE) by PSPCL were NIL. PSPCL submitted that it is incomprehensible as to how coal can be consumed by GVK without there being any generation during the month of March 2017. GVK is required to provide justification for the same.

e) Responding to GVK submission that normative auxiliary consumption for billing purpose by PSPCL has been considered as 9% in line with Regulation 36(E)(a) of CERC Tariff Regulations, 2014 for FY 2016-17 instead of taking actual auxiliary consumption, PSPCL submitted that the computation of energy charges is required to be done strictly in terms of the formula prescribed in Regulation 30(6) of the CERC Tariff Regulations, 2014 in terms of the Commission's Order dated 06.03.2019 in Petition No. 68/2017. In the said formula, the auxiliary consumption is to be considered in the denominator, which has in fact been considered. The declaration of availability by the generator is on ex-bus basis. The ex-bus energy declared to be available is the quantum of energy for which the fixed charges are payable. Thus, the plea of GVK in the said Petition that PAF should be determined by grossing up the declared capacity with the normative auxiliary consumption of 9% has been considered and rejected by the Commission in its Order dated 06.03.2019. GVK has challenged the said Order before the Hon'ble Tribunal in Appeal No.189/2019 which is presently pending adjudication wherein no stay has been granted to GVK. As such, the findings of the Commission are binding on GVK.

f) PSPCL has stated that GVK has submitted that the Station heat rate for FY 2016-17 has been calculated on the basis of CERC Tariff Regulation 36(C)(b) 2014. The station heat rate has been calculated by multiplying the Design Heat Rate (2221Kcal/kwh) with a factor 1.045. Accordingly, the station heat rate (SHR) of the plant comes out 2321 kcal/kWh which has also been considered for the purpose of billing by PSPCL during FY 2016-17 instead of the actual Design Heat Rate. Similarly, for billing purposes, the specific fuel oil consumption considered by PSPCL is based on normative basis i.e. 0.5 ml/kwh for FY 2016-17 which is as per CERC Tariff Regulations 2014.

g) PSPCL submitted that GVK has considered the GCV for the purpose of billing in compliance of the Commission’s Order dated 06.03.2019 in Petition No. 68/2017. In compliance of the above Order, the GCV considered by PSPCL for the purpose of billing is based on a comparison of coal cost per GCV of its own thermal power plants i.e. GNDTP/GHTP/GGSSTP with that of the GVK whichever is lower. However, findings of the Commission as regards GCV in the said Order have been challenged by PSPCL before the Hon'ble Appellate Tribunal in Appeal No. 192/2019 and the same is pending adjudication. As such, any true up on the said aspect would be subject to the outcome of the said Appeal.

h) PSPCL stated that GVK has claimed an amount of Rs. 6211/MT for April 2016, Rs. 5701/MT for July 2016 and Rs. 5429/MT for the month of August 2016. However, the landed price of coal considered by PSPCL for billing purpose for FY 2016-17 is based on the landed price of coal procured by GVK, Railway Transportation charges thereof and Road Transportation charges based on the Commission's Order dated 06.03.2019 in Petition No. 68/2017. The bills submitted by GVK differ from the Landed Price of Coal submitted by GVK. PSPCL requested the Commission to refer to and rely upon the details provided by PSPCL.

i) While working out the energy charges, fuel transit & handling loss has been considered by PSPCL as per the Commission's Order dated 06.03.2019 in Petition no.68/2017 i.e. 1% or actual transit loss whichever is less.

j) PSPCL stated that GVK has submitted the total fuel cost of Rs. 66.45 Crore for FY 2016-17. It is submitted that the billing of the energy charges for the GVK's project is done on the basis of energy scheduled by PSPCL. The energy charge rate is calculated on the basis of normative parameters instead of actual. PSPCL made the payment of energy bills submitted by

GVK to PSPCL for the months of April-2016, July-2016 & Aug-2016. The energy charges paid during FY 2016-17 were originally Rs. 52.07 Crore which were later revised in terms of the Commission's Order dated 06.03.2019 to Rs. 55.12 Crore including Rs. 3.05 Crore as arrears. In addition Rs. 0.51 Crore was paid as interest.

Commission's Analysis

12.6 As GVK has referred to the previous Orders of the Commission in its various submissions, it is pertinent to bring out the following:

GVK had filed petition no. 65 of 2013 and 33 of 2015 with the following prayers:

<u>Petition no. 65 of 2013</u>

(a) direct the extension of the SCOD for completion and commercial operation of the project for a period of 9 months in the case of unit #1 and for a further period of 6 months for unit #2 to be calculated from the closure of the Force Majeure events namely, approval of railway drawings both in regard to Power project and in regard to coal mine siding and the availability of the land to enter upon and commence mining operations; and

(b) pass any such further order or orders as this Commission may deem just and proper in the circumstances of the case.

<u>Petition no. 33 of 2015</u>

(a) Declare that the Cancellation of the Coal Blocks pursuant to the judgment of the Hon'ble Supreme Court dated

25.08.2014 and Order dated 24.09.2014 is Change in Law Event in terms of Article 13 of the PPA.

(b) Declare that the Promulgation of the Ordinance is a Change in Law event in terms of Article 13 of the PPA.

(c) Declare that the Cancellation of the Coal Blocks pursuant to the judgment of the Hon'ble Supreme Court dated 25.08.2014 and Order dated 24.09.2014 is Force Majeure Event in terms of Article 12 of the PPA.

(d) Declare that the Promulgation of the Ordinance is a Force Majeure Event in terms of Article 12 of the PPA.

(e) Devise an alternate mechanism for the sourcing of Fuel including necessary amendments to the Amended and Restated PPA;

(f) Grant consequential extension of SCOD till the issue of procurement of fuel is decided by this Hon'ble Commission.

Vide interim Order dated 12.08.2015, the Commission decided to refer all issues for arbitration except prayer (e) of the petition no. 33 of 2015, considering it was urgent in nature and needed to be decided by the Commission forthwith in the interest of the project. The Commission decided the said issue vide final Order dated 01.02.2016 common to petition no. 65 of 2013 & 33 of 2015. The common Order dated 01.02.2016 was challenged by PSPCL before Hon'ble Appellate Tribunal for Electricity in Appeal No. 68 of 2016 (petition no. 33 of 2015) and Appeal No. 69 of 2016 (petition no. 65 of 2013).

Further, the findings of the Commission in Order dated 06.03.2019 in petition no. 68 of 2017 filed by GVK on the various issues i.e auxiliary consumption, cost of coal, surface transport at mine end and handling charges, GCV, transit and handling loss besides some other issues has been challenged by GVK in Appeal No. 189 of 2019.

The Order of the Commission dated 21.05.2018 in petition no. 45 of 2017, where the availability of plant in FY 2016-17 was an issue, has also been challenged by GVK in Appeal No. 218 of 2018.

Also the Order of the Commission dated 17.01.2020 in petition no. 54 of 2017, wherein the Commission has determined the capital cost of the project and determined the AFC/capacity charges and the energy charges for FY 2016-17, has been challenged by GVK in Appeal No. 41 of 2020. In this petition, GVK has raised some of the issues already decided in the aforementioned Orders e.g. coal cost, surface transportation, auxiliary consumption etc. This is not permissible as the issues already decided in these Orders cannot be taken again wherever GVK has tried to do so. Furthermore, there is no stay on these Orders by Hon'ble APTEL. Accordingly, the energy charges for FY 2016-17 are payable/paid by PSPCL to GVK in terms of the PPA, Order dated 01.02.2016 common to petition no. 65 of 2013 & 33 of 2015 and Order dated 06.03.2019 in petition no. 68 of 2017 filed by GVK.

13.0 Interest on under–recovered or over-recovered fixed charges

13.1 The Commission notes that the applicability of Regulation 9 of PSERC Regulations, 2005 would be on the distribution companies or generating cum distribution companies and cannot be applied as it is to the standalone generating companies. The Commission observes that Regulation 8 (13) of CERC (Terms and Conditions of Tariff) Regulation, 2014 are squarely applicable to under recovery or over recovery of fixed charges in case of generating companies.

13.2 The Regulation 8 (13) of CERC (Terms and Conditions of Tariff) Regulation, 2014 is re-produced below for reference: -

> *"The amount under-recovered or over-recovered, along with simple interest at the rate equal to the bank rate on 1st April of the respective year, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments starting within three months from the date of the tariff order issued by the Commission".*

13.3 The Commission decides to adopt the CERC Regulations for determining interest equivalent to bank rate on under recovery or over recovery of fixed charges.

Accordingly, interest shall be allowable or recoverable as per Regulation 8 (13) of CERC (Terms and Conditions of Tariff) Regulation, 2014 on under-recovered or over-recovered Annual Fixed Charges (AFC) determined by the Commission.

This Petition stands disposed off accordingly.

Sd/-	Sd/-	Sd/-
(Anjuli Chandra)	**(S.S. Sarna)**	**(Kusumjit Sidhu)**
Member	**Member**	**Chairperson**

Chandigarh
Dated: 07.09.2020